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OPEN MEETINGMEMORANDUM RECEIVED

Arizona Corporation Commission MAR 20 P 3:14

DOCKETED

TO: THE COMMISSION

FROM: Utilities Division

MAR 20 2001

AZ CORP COMMISSION  
DOCUMENT CONTROL

DATE: March 20, 2001

DOCKETED BY

RE: IN THE MATTER OF COMMISSION CONSIDERATION AND POSSIBLE ACTION ON REQUESTS FOR REHEARING AND RECONSIDERATION TO MODIFY DECISION NO. 63364, ADOPTING THE ENVIRONMENTAL PORTFOLIO STANDARD RULES (DOCKET NO. RE-00000C-00-0377)

On February 8, 2001, the Commission entered Decision No. 63364, adopting the Environmental Portfolio Standard Rules. Five parties to the docket filed timely applications for rehearing and reconsideration of Decision No. 63364. On March 9, 2001, the Commission granted the applications for rehearing to provide Staff an opportunity to review the requests and prepare recommendations to the Commission for its consideration and possible action. The attached Staff Report reflecting Staff's recommendations was filed and mailed to interested parties on March 15, 2001. On March 13, 2001, Tucson Electric Power Company (TEP) filed comments on the applications for rehearing. TEP's comments addressed the application filed by Arizona Public Service Company and agree with Staff's recommendations.

Staff's recommendations are summarized below.

1. The rule R14-2-1618.F should be modified as follows:

Photovoltaic or solar thermal electric resources that are located on a consumer's premises shall count toward the Environmental Portfolio Standard applicable to the current Load-Serving Entity serving that consumer unless a different Load-Serving Entity is entitled to receive credit for such resources under the provisions of R14-2-1618.C.3.a.

2. Decision No. 63364 should be modified to provide the cooperatives an exemption from the rules as follows:
  - a. Affected Utilities, which are nonprofit, member-owned cooperatives should be exempt, at their own election, from compliance with the Environmental Portfolio Standard Rules, including the portfolio percentage requirements set forth in R14-2-1618.B, for a period of 180 days from the effective date of the order. Cooperatives electing exemption


THE COMMISSION

March 20, 2001

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status should file a notice in this docket within 30 days of the effective date of the order.

- b. Notwithstanding their exemption from compliance with the Environmental Portfolio Standard Rules, the exempt cooperatives could, at their own option, collect the Environmental Portfolio Surcharge authorized by R14-2-1618.A.2 and apply the proceeds so collected toward meeting the Environmental Portfolio percentage at the 180-day exemption period expiration, unless the exemption period is extended by the timely filing of a plan or by order of the Commission.
  - c. On or before the expiration of the 180-day exemption period, exempt cooperatives should file for Commission consideration a plan for meeting their portfolio requirements. In the alternative, a cooperative could file a request stating good cause why the exemption period should be extended. The timely filing of a plan or request for extension should extend the exemption period until the Commission considers and acts upon the plan or the request.
3. Representatives of the exempt cooperatives should meet with Staff and representatives of the Rural Utilities Service and other appropriate federal agencies to discuss these matters to work towards achieving mutual goals within the context of the Environmental Portfolio Standard Rules.
  4. Section R14-2-1618.E should be deleted from the rules.
  5. Section R14-2-1601.39 should be deleted from the rules.
  6. All other matters raised in the five applications for rehearing or reconsideration filed in this docket should be denied by the Commission.



Deborah R. Scott  
for Director  
Utilities Division

DRS:RTW:BEK:lhbm

ORIGINATOR: Ray T. Williamson

## **STAFF REPORT**

### **Staff's Recommendations Regarding Requests for Reconsideration of Environmental Portfolio Standard Rules**

(Docket No. RE-00000C-00-0377)

#### **1. INTRODUCTION.**

On February 8, 2001, the Commission entered Decision No. 63364, adopting the Environmental Portfolio Standard Rules. Five parties to the docket filed timely applications for rehearing and reconsideration of Decision No. 63364. On March 9, 2001, the Commission granted the applications for rehearing to provide Staff an opportunity to review the requests and prepare recommendations to the Commission for its consideration and possible action. This Staff Report reflects Staff's recommendations.

Staff has reviewed all of the applications. Staff finds that most of the arguments included in the requests for rehearing of Decision No. 63364 concern issues that have been argued to and addressed by the Commission in this and previous dockets. However, Staff has identified certain specific matters that it believes merit Commission reconsideration. These specific matters are discussed below with Staff's recommendations for Commission action to modify Decision No. 63364 to reflect limited changes to Decision No. 63364 and the Environmental Portfolio Standard Rules.

#### **2. APS'S REQUEST TO CLARIFY R14-2-1618.F.**

The first matter Staff believes merits reconsideration is Arizona Public Service Company's (APS's) request to clarify an unintentional discrepancy between two sections of the rules. In R14-2-1618.C.3.a, a Load-Serving Entity that financed or paid for a qualifying technology would be able to claim an extra credit multiplier. However, R14-2-1618.F provides that qualifying resources located on the consumer's premises shall count toward the portfolio requirement of the Load-Serving Entity serving the customer. These two rule provisions appear to be in conflict. The intent of the rules was to reward Load-Serving Entities that financed or paid for customer premise systems. The wording discrepancy could be construed to discourage customer premises systems by giving the portfolio requirement credit to the customer's current Load-Serving Entity, even if it had not financed or paid for the qualifying system.

APS has suggested that R14-2-1618.F be modified as follows:

Photovoltaic or solar thermal electric resources that are located on a consumer's premises shall count toward the Environmental Portfolio Standard applicable to the current Load-Serving Entity serving that consumer unless a different Load-Serving Entity is entitled to receive credit for such resources under the provisions of R14-2-1618.C.3.a.

After Staff's review of this matter, Staff agrees with APS' request to modify the language of R14-2-1618.F as proposed above. Further, Staff believes that this is a non-substantive change

that merely clarifies an apparent discrepancy in rule wording. Staff recommends that the Commission adopt APS' language change to R14-2-1618.F.

APS also requested that the Commission change the language of R14-2-1618.M to remove an in-state requirement for alternative technology choices for meeting the Portfolio requirements. Staff does not agree with this change. The provisions of R14-2-1618.M are merely permissive options to meet the Portfolio requirements. They do not mandate the use of only Arizona technologies to meet the standard, in as much as the standard can be met under other rule provisions.

### **3. AEPCO's Request for Rehearing and Stay of the Rules.**

Arizona Electric Power Cooperative (AEPCO) based its request for reconsideration and stay of Decision No. 63346 on a wide range of alleged legal challenges to the Commission's authority to promulgate and adopt the Environmental Portfolio Standard Rules. Staff does not agree with AEPCO's legal challenges to the rules because the rules are within the Commission's broad powers founded both in the Arizona Constitution and in Title 40 of the Arizona Revised Statutes.

However, the Environmental Portfolio Standard Rules have a far reaching significance in promoting the public interests of both public service corporations and their customers. As a consequence, Staff believes that participants' active cooperation in achieving the Portfolio goals is in the public interest as well. It was from that viewpoint that Staff considered AEPCO's request for rehearing, and centered its review on whether to recommend that the Commission provide AEPCO and its member cooperatives another opportunity to work with Staff and the Commission to accomplish mutual goals within the context of the Environmental Standard Portfolio Rules.

In brief summary of AEPCO's relevant filings in this docket concerning its cooperative status, AEPCO alleged that the Rural Utilities Service (RUS) requirements would preclude AEPCO's financing and purchase of Portfolio resources. For this and other reasons, AEPCO requested that cooperative participation in the Portfolio Standard be limited and suggested in its previously filed exceptions that a special rule be adopted to limit their participation.

Staff responded and the Commission agreed at the Open Meeting in which the Commission adopted the Portfolio Rules in Decision No. 63346, that a new rule provision was unnecessary. The Commission's rules provide the cooperatives an opportunity to seek a waiver of any rule requirement. To date, no Portfolio Rule waiver applications by AEPCO or its member cooperatives have been filed at the Commission.

Staff realizes that AEPCO and its member cooperatives may have different concerns than other Load-Serving Entities because of their unique status as customer-owned cooperatives. After the Commission granted the requests for rehearing of Decision No. 63346, Staff members met with AEPCO representatives. The discussion included whether AEPCO's proposed plan for reorganization provided for the portfolio requirements and whether AEPCO would seek a waiver of RUS requirements it alleges preclude the cooperatives from full participation in the Environmental Portfolio Standard Rules. AEPCO's response was that it is still developing its plan.

In light of the above, Staff believes that it would be appropriate to allow a reasonable amount of time for AEPCO and other cooperatives to develop a plan to meet their Portfolio requirements. Any cooperative-proposed plan that varies from the Portfolio Rules could be submitted with a request for a waiver. In addition, Staff believes that it would be appropriate for both Staff and AEPCO representatives to work together and meet with RUS officials to discuss and achieve mutual goals.

Therefore, Staff recommends that the Commission modify Decision No. 63346 to stay the Environmental Portfolio Standard Rules as applied to the cooperatives for 180 days. Staff proposes the following language to modify Decision No. 63346 and implement the stay provisions to apply only to cooperatives.

Affected Utilities, which are nonprofit, member-owned cooperatives are exempt, at their own election, from compliance with the Environmental Portfolio Standard Rules, including the portfolio percentage requirements set forth in R14-2-1618.B for a period of 180 days from the effective date of this order. Cooperatives electing exemption status shall file a notice in this docket within 30 days of the effective date of this order. Notwithstanding their exemption from compliance with the Environmental Portfolio Standard Rules, the exempt cooperatives may, at their own option, collect the Environmental Portfolio Surcharge authorized by R14-2-1618.A.2 and apply the proceeds so collected toward meeting the Environmental Portfolio percentage at the 180-day exemption period expiration, unless the exemption period is extended by the timely filing of a plan or by order of the Commission.

On or before the expiration of the 180-day exemption period, exempt cooperatives shall file for Commission consideration a plan for meeting their portfolio requirements. In the alternative, a cooperative may file a request stating good cause why the exemption period should be extended. The timely filing of a plan or request for extension shall extend the exemption period until the Commission considers and acts upon the plan or the request.

Staff also recommends that the Commission order representatives of the exempt cooperatives to meet with Staff, RUS's representatives and other appropriate federal agencies to discuss these matters to achieve mutual goals within the context of the Environmental Portfolio Standard Rules.

Staff's recommendations to modify Decision No. 63364 do not change the rules' language, but modify the Decision adopting the rules to provide for the stay as described above. Therefore, this modification to Decision No. 63346 is not a substantive change to the rules.

#### **4. Requests Related to Reconsideration of Deficiency Payments in R14-2-1618.E.**

Several requests for reconsideration concerned opposition to the deficiency payments, and related matters, under R14-2-1618.E that may be imposed by the Commission against Load-Serving Entities at some future time, but no earlier than 2004, for failure to meet the portfolio requirements.

Staff believes the Commission has the power to impose such deficiency payments and take other actions provided for in this rule. However, adoption of deficiency payment provisions does not appear to be essential to the effectiveness of the Portfolio Rules at this time because the imposition of deficiency payments will not be effective earlier than 2004. Similarly, the discretionary setting aside of contracts for deficiencies in Portfolio requirements will not be effective until 2004. In addition, the rule now provides for prospective modification of the Portfolio requirements by the Environmental Portfolio Cost Evaluation Working Group as the basis for the deficiency payments or other actions under 1618.E to assure Portfolio standards are met.

In light of the potential for future modification of the rules as presently provided in the rules themselves, Staff agrees with the requests that the Commission reconsider adoption of specific deficiency rule provisions that will not be imposed until 2004. Notwithstanding Staff's agreement that the Commission should reconsider the adoption of R14-2-1618.E at this time, Staff believes the Commission may consider this matter at a later time and also direct the Environmental Portfolio Cost Evaluation Working Group to make specific recommendations to the Commission. Staff also notes, as do the requests, even without a specific rule provision concerning deficiency payments, the Commission's orders and rules are enforceable by general statutory penalty provisions for violations of their provisions.

Therefore, Staff recommends that the Commission delete section R14-2-1618.E from the rules. Staff also recommends that R14-2-1601.39, which is a definition related to the deficiency payment, also be deleted. The deletion of language in the Portfolio Rules related to deficiency provisions is not a substantive change to the rules. The Commission's rules related to deficiency provisions were discretionary and prospective. The Commission is not mandated to adopt deficiency provisions, and is free to reconsider these matters at a later time.

## **5. Conclusion.**

Requests for rehearing filed by Sulphur Springs Valley Electric Cooperative, the parties collectively referred to as AECC (Phelps Dodge Corporation, ASARCO, and Arizonans for Electric Choice and Competition), and the Residential Utility Consumer Office reflected alleged legal challenges to the rules similar to those made by AEPCO in its application. As stated above, Staff does not believe these alleged legal challenges compel modification of Decision No. 63346 or the rules adopted in the Decision.

Staff recommends that the Commission modify Decision No. 63346 and the Environmental Portfolio Standard Rules as discussed above. As for all other matters raised in the five applications for rehearing or reconsideration filed in this docket, Staff recommends that they be denied by the Commission.

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 WILLIAM A. MUNDELL  
Chairman

3 JIM IRVIN  
Commissioner

4 MARC SPITZER  
Commissioner

5  
6 IN THE MATTER OF COMMISSION )  
7 CONSIDERATION AND POSSIBLE ACTION )  
8 ON REQUESTS FOR REHEARING AND )  
9 RECONSIDERATION TO MODIFY DECISION )  
10 NO. 63364, ADOPTING THE )  
11 ENVIRONMENTAL PORTFOLIO STANDARD )  
12 RULES )

DOCKET NO. RE-00000C-00-0377

DECISION NO. \_\_\_\_\_

ORDER

13  
14 Open Meeting  
15 March 29, 2001  
16 Phoenix, Arizona

17 BY THE COMMISSION:

18 FINDINGS OF FACT

19 1. On February 8, 2001, the Commission entered Decision No. 63364, adopting the  
20 Environmental Portfolio Standard Rules.

21 2. Five parties to the docket filed timely applications for rehearing and reconsideration  
22 of Decision No. 63364.

23 3. On March 9, 2001, the Commission granted the applications for rehearing to provide  
24 Staff an opportunity to review the requests and prepare recommendations to the Commission for its  
25 consideration and possible action. The Staff Report reflecting Staff's recommendations was filed and  
26 mailed to interested parties on March 15, 2001.

27 4. On March 13, 2001, Tucson Electric Power Company (TEP) filed comments on the  
28 applications for rehearing. TEP's comments addressed the application filed by Arizona Public Service  
Company and agree with Staff's recommendations.

5. Staff's recommendations are summarized below.

a. The rule R14-2-1618.F should be modified as follows:

Photovoltaic or solar thermal electric resources that are located  
on a consumer's premises shall count toward the Environmental  
Portfolio Standard applicable to the current Load-Serving Entity

1 serving that consumer unless a different Load-Serving Entity is  
2 entitled to receive credit for such resources under the provisions  
3 of R14-2-1618.C.3.a.

4 b. Decision No. 63364 should be modified by this order to provide the  
5 cooperatives an exemption from the rules as follows:

6 (i) Affected Utilities, which are nonprofit, member-owned cooperatives  
7 should be exempt, at their own election, from compliance with the  
8 Environmental Portfolio Standard Rules, including the portfolio  
9 percentage requirements set forth in R14-2-1618.B, for a period of 180  
10 days from the effective date of the order. Cooperatives electing  
11 exemption status should file a notice in this docket within 30 days of  
12 the effective date of the order.

13 (ii) Notwithstanding their exemption from compliance with the  
14 Environmental Portfolio Standard Rules, the exempt cooperatives  
15 could, at their own option, collect the Environmental Portfolio  
16 Surcharge authorized by R14-2-1618.A.2 and apply the proceeds so  
17 collected toward meeting the Environmental Portfolio percentage at the  
18 180-day exemption period expiration, unless the exemption period is  
19 extended by the timely filing of a plan or by order of the Commission.

20 (iii) On or before the expiration of the 180-day exemption period, exempt  
21 cooperatives should file for Commission consideration a plan for  
22 meeting their portfolio requirements. In the alternative, a cooperative  
23 could file a request stating good cause why the exemption period  
24 should be extended. The timely filing of a plan or request for extension  
25 should extend the exemption period until the Commission considers  
26 and acts upon the plan or the request.

27 c. Representatives of the exempt cooperatives should meet with Staff and  
28 representatives of the Rural Utilities Service and other appropriate federal  
agencies to discuss these matters to work towards achieving mutual goals  
within the context of the Environmental Portfolio Standard Rules.

d. Section R14-2-1618.E should be deleted from the rules.

e. Section R14-2-1601.39 should be deleted from the rules.

f. All other matters raised in the five applications for rehearing or reconsideration  
filed in this docket should be denied by the Commission.

#### 26 CONCLUSIONS OF LAW

27 1. Pursuant to the Arizona Constitution, Article XV, Section 3 and the Arizona Revised  
28 Statutes, Title 40 generally, the Commission has jurisdiction over this matter.



2. The Commission, having reviewed the applications, Staff's Report filed March 15, 2001, and Staff's Memorandum dated March 20, 2001, concludes that it is in the public interest to approve and adopt Staff's recommendations.

ORDER

THEREFORE, IT IS ORDERED that R14-2-1618.F be modified as proposed in Finding of Fact No. 5.a.

IT IS FURTHER ORDERED that Affected Utilities, which are nonprofit, member-owned cooperatives shall be exempt, at their own election, from compliance with the Environmental Portfolio Standard Rules, including the portfolio percentage requirements set forth in R14-2-1618.B, for a period of 180 days from the effective date of the order. Cooperatives electing exemption status shall file a notice in this docket within 30 days of the effective date of the order.

IT IS FURTHER ORDERED that the exempt cooperatives may, at their own option, collect the Environmental Portfolio Surcharge authorized by R14-2-1618.A.2 and apply the proceeds so collected toward meeting the Environmental Portfolio percentage at the 180-day exemption period expiration, unless the exemption period is extended by the timely filing of a plan or by order of the Commission.

IT IS FURTHER ORDERED that on or before the expiration of the 180-day exemption period, exempt cooperatives shall file for Commission consideration a plan for meeting their portfolio requirements. In the alternative, a cooperative may file a request stating good cause why the exemption period should be extended. The timely filing of a plan or request for extension shall extend the exemption period until the Commission considers and acts upon the plan or the request.

IT IS FURTHER ORDERED that representatives of the exempt cooperatives shall meet with Staff and representatives of the Rural Utilities Service and other appropriate federal agencies to discuss these matters to work towards achieving mutual goals within the context of the Environmental Portfolio Standard Rules.

IT IS FURTHER ORDERED that Section R14-2-1618.E shall be deleted from the rules.

1 IT IS FURTHER ORDERED that Section R14-2-1601.39 shall be deleted from the rules.

2 IT IS FURTHER ORDERED that all other matters raised in the five applications for rehearing  
3 or reconsideration filed in this docket are denied.

4 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

5  
6 **BY ORDER OF THE ARIZONA CORPORATION COMMISSION**

7  
8 CHAIRMAN

COMMISSIONER

COMMISSIONER

9  
10 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive  
11 Secretary of the Arizona Corporation Commission, have  
12 hereunto, set my hand and caused the official seal of this  
13 Commission to be affixed at the Capitol, in the City of  
14 Phoenix, this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

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18 BRIAN C. McNEIL  
Executive Secretary

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28  
DISSENT: \_\_\_\_\_

DRS:BEK:lm

## SERVICE LIST FOR: ENVIRONMENTAL PORTFOLIO STANDARD RULEMAKING

DOCKET NO. RE-00000C-00-0377

Carl Dabelstein  
Citizens Communications Company  
2901 North Central Avenue, Suite 1660  
Phoenix, Arizona 85004

Daniel Musgrove  
Universal Entech, LLC  
5501 North 7<sup>th</sup> Ave., PMB 233  
Phoenix, AZ 89013

Jessica Youle, Sr. Staff Attorney  
Salt River Project  
Mail Station PAB300  
P. O. Box 52025  
Phoenix, Arizona 85072-2025

Jana Brandt, Reg. Agcy. Rep.  
Salt River Project—  
Mail Station PAB221  
P. O. Box 52025  
Phoenix, Arizona 85072-2025

Christopher Hitchcock, Esq.  
HITCHCOCK & HICKS  
P.O. Box 87  
Bisbee, AZ 85603

Ms. Betty Pruitt  
ADOC-EO  
3800 N. Central, #1200  
Phoenix, AZ 85012

Arturo Rivera, Pres.  
Renewable Technology Co.  
1242 E. Washington St., Ste 200  
Phoenix, AZ 85034

Robert S. Lynch  
Arizona Transmission Dependent Utility Group  
340 E. Palm Lane, Suite 140  
Phoenix, AZ 85004-4529

Lee Tanner  
Electrisol, Ltd.  
1215 E. Harmont Dr.  
Phoenix, AZ 85020

- 1 Dale Rogers  
Rocketdyne Division  
Boeing North America  
2 P.O. Box 7922-MS FA-66  
Canoga Park, CA 91309-7922  
3
- 4 Steve Chalmers  
Powermark Corporation  
4044 E. Whitton  
5 Phoenix, AZ 85018
- 6 Michael Neary  
Ariseia  
7 2034 N. 13<sup>th</sup> Street  
Phoenix, AZ 85001  
8
- 9 Jan Miller  
SRP  
1600 N. Priest Dr.  
10 Tempe, AZ 85281
- 11 Vincent Hunt  
City of Tucson  
12 4004 S. Park Ave., Bldg. #2  
Tucson, AZ 85714  
13
- 14 Michelle L. Hart  
Photocomm, Inc.  
7681 E. Gray Road  
15 Scottsdale, AZ 85260
- 16 Harry Braun, III  
Stirling Energy Systems  
17 6245 N. 24<sup>th</sup> Parkway, Suite 209  
Phoenix, AZ 85016  
18
- 19 Robert Walker  
Entech, Inc.  
1077 Chisolm Trail  
20 Keller, TX 76248
- 21 Moneer H. Azzam  
ASE Americas  
22 4 Suburban Park Drive  
Billerica, ME 01821  
23
- 24 Ray Dracker  
Bechtel Corporation  
P.O.Box 193965  
25 San Francisco, CA 94119
- 26 Barry L. Butler, PH.D  
Science Applications Int'l Corp.  
27 10260 Campus Point Drive - MS-C2  
San Diego, CA 92121  
28

1 Robert H. Annan  
2 6605 E. Evening Glow Drive  
3 Scottsdale, AZ 85262

4 Rick Gilliam  
5 LAW Fund  
6 2260 Baseline Road, Suite 200  
7 Boulder, CO 80302

8 Vahan Garboushian  
9 Amonix, Inc.  
10 3425 Fujita Street  
11 Torrance, CA 90505

12 Dan Greenberg  
13 Ascension Technology  
14 235 Bear Hill Road  
15 Waltham, ME 02154

16 Kathy Kelly  
17 Corp. for Solar Technology & Renewable  
18 6863 W. Charleston  
19 Las Vegas, NV 89117

20 Rick Mack  
21 TEP  
22 220 W. 6<sup>th</sup> Street  
23 Tucson, AZ 85701

24 Solar Energy Industries Assoc.  
25 1111 19<sup>th</sup> St. N, Suite 260  
26 Arlington, VA 22209-1712

27 Howard Wenger  
28 Pacific Energy Group  
32 Valla Court  
Walnut Creek, CA 94596

30 Jim B. Combs  
31 Conservative Energy Systems  
32 40 W. Baseline, Suite 112  
33 Mesa, AZ 85210

34 James H. Caldwell, Jr.  
35 CEERT  
36 P.O. Box 26  
37 Tracy's Landing, MD 20779

38 Herb Hayden  
39 APS  
40 P.O.Box 53999 - Mail Station 9110  
41 Phoenix, AZ 85072-3999

42 Eric Wills  
43 Daggett Leasing Corporation  
44 20668 Paseo De La Cumbre  
45 Yorba Linda, CA 92887

1 Alphonse Bellac  
York Research Corporation  
2 6 Ladyslipper Lane  
Old Lyme, CT 06371  
3  
4 Jane Weissman  
PV4U  
15 Hayden Street  
5 Boston, Massachusetts 02131-4013  
6  
7 David Berry  
Resource Management International, Inc.  
302 N. First Avenue, Suite 810  
8 Phoenix, AZ 85003  
9  
10 Barry M. Goldwater, Jr.  
Ariselia  
3104 E. Camelback Road, Suite 274  
Phoenix, AZ 85016  
11  
12 Frank Brandt  
1270 E. Appalachian Road  
Flagstaff, AZ 86004  
13  
14 Christy Herig  
1617 Cole Blvd.  
Golden, CO 80401  
15  
16 Mark Randall  
Daystar Consulting, LLC  
P.O. Box 761  
17 Clarksdale, AZ 86324  
18  
19 Jane Winiecki  
Yavapai-Apache Nation  
Economic Development Authority  
P.O. Box 1188  
20 Camp Verde, AZ 86322  
21  
22 Fred Sanchez  
Yavapai-Apache Nation  
P.O. Box 1188  
Camp Verde, AZ 86322  
23  
24 Phyllis Bigpond  
Inter Tribal Council of Arizona  
2214 N. Central, Suite 100  
Phoenix, AZ 85004  
25  
26 Robert Jackson  
Colorado River Indian Tribes  
Route 1 - Box 23-B  
27 Parker, AZ 85334  
28

- 1 Steven Brown
- 2 Yavapai Tribe
- 3 530 E. Merritt
- 4 Prescott, AZ 86301
- 5
- 6 Rory Majenty
- 7 Ft. McDowell Mohave Apache Indian Community
- 8 P.O. Box 17779
- 9 Fountain hills, AZ 85269
- 10
- 11 Rick Tewa
- 12 Office of Economic Development
- 13 The Hope Tribe
- 14 P.O. Box 123
- 15 Kykotsmovi, AZ 86039
- 16
- 17 Debbie Tewa
- 18 Native Sun
- 19 P.O. Box 660
- 20 Kykotsmovi, AZ 86039
- 21
- 22 Cameron Danies
- 23 Hualapai Tribe
- 24 P.O. Box 179
- 25 Peach Springs, AZ 86434
- 26
- 27 Jimmy Daniels
- 28 Navajo Tribal Utility Authority
- 29 P.O. Box 170
- 30 Ft. Defiance, AZ 86504
- 31
- 32 Leonard Gold
- 33 398 S. Mill Avenue, Suite 306
- 34 Tempe, AZ 85281
- 35
- 36 Steve Secrest
- 37 Golden Genesis Company
- 38 P.O. Box 14230
- 39 Scottsdale, AZ 85267
- 40
- 41 Jeff Schlegel
- 42 1167 W. Samalayuca Drive
- 43 Tucson, AZ 85704-3224
- 44
- 45 Clyde Hostetter
- 46 3055-190 N. Red Mountain
- 47 Mesa, AZ 85207
- 48
- 49 ACAA
- 50 2627 N. 3<sup>rd</sup> Street, Suite 2
- 51 Phoenix, AZ 85004
- 52
- 53 Michael Grant
- 54 Gallagher & Kennedy
- 55 2575 E. Camelback Rd.
- 56 Phoenix, AZ 85016

- 1 Peter Glaser  
Shook, Hardy & Bacon, LLP  
600 14<sup>th</sup> Street, N.W., Suite 800  
2 Washington, DC 20005-2004
- 3 David G. Calley  
Southwest Windpower, Inc.  
4 2131 N. First Street  
Flagstaff, AZ 86004
- 5 Kenneth R. Saline  
6 K.R. Saline & Associates  
160 N. Pasadena, Suite 101  
7 Mesa, AZ 85201-6764
- 8 Tom Lepley  
Phaser Energy Co.  
9 4202 E. Evans Drive  
Phoenix, AZ 85032
- 10 Mike Patterson  
11 Rt.1 - Box  
Swansea  
12 Lone Pine, CA 83545
- 13 Derrick Rebello  
Quantum Consulting  
14 2030 Addison Street  
Berkeley, CA 94704
- 15 Bryan Scott Canada  
16 620 E. Broadway Lane  
Tempe, AZ 85282
- 17 C. Webb Crockett  
18 Fennemore Craig  
3003 N. Central Avenue, Suite 2600  
19 Phoenix, AZ 85012-2913
- 20 Scott Wakefield  
RUCO  
21 2828 N. Central Avenue, Suite 1200  
Phoenix, AZ 85004
- 22 Douglas C. Nelson  
23 Douglas C. Nelson, P.C.  
7000 North 16<sup>th</sup> Street, Suite 120-307  
24 Phoenix, AZ 85020
- 25 Chris Sherring  
PVI  
26 171 Commercial Street  
Sunnyvale, CA 94086
- 27  
28



Chris King

Utility.Com, Inc.

828 San Pablo Avenue

Albany, CA 94706

Donald W. Aitken, PH.D

Union of Concerned Scientists

2397 Shattuck Avenue, Suite 203

Berkeley, CA 94704

Barbara Klemstine

P.O. Box 53999

Phoenix, AZ 85072-3999

David Couture

TEP

220 W. 6<sup>th</sup> Street

P.O. Box 711

Tucson, AZ 85702-0711

David L. Deibel

City of Tucson

P.O. Box 27210

Tucson, AZ 85726-7210

Paul R. Michaud

Martinez & Curtis

2712 North 7<sup>th</sup> Street

Phoenix, AZ 85006-01090

Jon Wellingshoff

411 Wedgewood Drive

Henderson, NV 89014

Edward Salgian

Distributed Energy Association of Arizona

7250 North 15<sup>th</sup> Street, Suite 102

Phoenix, AZ 85020-5270

Thomas Hine

10632 North 11<sup>th</sup> Street

Phoenix, AZ 85020

Steven M. Wheeler

Thomas L. Mumaw

Jeffrey B. Guldner

Snell & Wilmer

One Arizona Center

Phoenix, AZ 85004

Raymond S. Heyman

Roshka, Heyman & DeWulf

400 North Fifth Street, Suite 1000

Phoenix, AZ 85004-3902

1 Kenneth C. Sundlof, Jr.  
2 Jennings, Strouss & Salmon, P.L.C.  
3 Two N. Central, 16<sup>th</sup> Floor  
4 Phoenix, AZ 85004-2393

5 Jana Van Ness  
6 Manager, State Regulations  
7 Arizona Public Service Company  
8 P.O. Box 53999 MS 9905  
9 Phoenix, AZ 85072-3999

10 Daniel Musgrove  
11 Universal Entech, LLC  
12 5501 N. 7<sup>th</sup> Ave., PMB 233  
13 Phoenix, AZ 85013

14 Michael W. Patten  
15 Roshka Heyman & DeWulf, PLC  
16 Two Arizona Center  
17 400 N. 5th St., Ste 1000  
18 Phoenix, AZ 85004-3906

19 Russell E. Jones  
20 Waterfall Economidis Caldwell Hanshaw & Villamana  
21 5210 E. Williams Circle, Ste 800  
22 Tucson, AZ 85711

23 Hearing Officer  
24 Arizona Corporation Commission  
25 1200 West Washington Street  
26 Phoenix, AZ 85007

27 Deborah R. Scott  
28 Director, Utilities Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, AZ 85007